

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

| | | |
|---|---|---------|
| Verizon North Inc., Verizon South Inc. | : | |
| and EGIX Network Services, Inc. | : | |
| | : | |
| Joint Petition of Verizon North Inc., | : | 03-0405 |
| Verizon South Inc. and EGIX Network | : | |
| Services, Inc. Regarding Adoption of an | : | |
| Interconnection Agreement. | : | |

ORDER

By the Commission:

I. PRELIMINARY MATTERS

On June 18, 2003, pursuant to 83 Illinois Administrative Code Part 763, Verizon North Inc., Verizon South Inc. (collectively "Verizon") and EGIX Network Services, Inc. ("EGIX") (Verizon and EGIX are referred to collectively as Petitioners) filed with the Illinois Commerce Commission ("Commission") a verified joint petition seeking Commission approval of an adopted Interconnection Agreement ("Agreement"), pursuant to Section 252(i) of the Telecommunications Act of 1996 ("Telecommunications Act") (47 U.S.C. 151, et seq.). The terms to be adopted are found in the Interconnection Agreement between Verizon and AT&T Communications of Illinois, approved by the Commission in Docket 99 AA-001. A statement in support of the petition was filed along with verifications sworn to by James R. Hargrave on behalf of Verizon and Joseph Isaacs on behalf of EGIX, stating that the facts contained in the petition for approval are true and correct to the best of their knowledge, information and belief.

Pursuant to notice as required by law and the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois, on July 7, 2003. Staff filed the Verified Statement of A. Olusanjo Omoniyi of the Commission's Telecommunications Division. At the hearing on July 7, Staff and Verizon appeared and agreed that there were no unresolved issues in this proceeding. Mr. Omoniyi's Verified Statement was admitted into evidence and the record was marked "Heard and Taken."

II. SECTION 252 OF THE TELECOMMUNICATIONS ACT

Section 252(a)(1) of the Act allows parties to enter into negotiated agreements regarding requests for interconnection, services or network elements. Verizon and EGIX have negotiated such an Agreement and have submitted it for approval in this proceeding.

Section 252(e)(1) of the Act provides, in part, that "[a]ny interconnection agreement adopted by negotiation...shall be submitted for approval to the State Commission." This Section further provides that a State Commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the State Commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the State Commission fails to act within 90 days after submission by the parties. This provision further states that "(n)o State court shall have jurisdiction to review the action of a State Commission in approving or rejecting an agreement under this section. Section 252(e)(5) provides for preemption by the Federal Communications Commission if a State Commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a State Commission's determination on a negotiated agreement may bring an action in the appropriate Federal District Court.

Section 252(h) requires a State Commission to make a copy of each agreement approved under subsection (3) "available for public inspection and copying within 10 days after the agreement or statement is approved." Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

III. THE AGREEMENT

In this Agreement, Verizon and EGIX adopt the terms of the interconnection Agreement between Verizon and AT&T Communications of Illinois, approved by the Commission in Docket 99 AA-001. It establishes the financial and operational terms for the physical interconnection between Verizon and EGIX networks on mutual and reciprocal compensation; unbundled access to Verizon's network elements, including its operations support systems functions; physical collocation of certain equipment; number portability; resale, and a variety of other business relationships. The Agreement becomes effective on May 26, 2003 and is scheduled to remain in effect for three (3) years. It shall continue in effect for consecutive one (1) year terms thereafter unless either party gives the other party at least ninety (90) calendar days written notice of termination, which shall be effective at the end of the initial term. A letter from Verizon to EGIX that was submitted with the Joint Petition is not part of the Agreement.

IV. STAFF'S POSITION

No party contended that the Agreement is discriminatory or contrary to the public interest. Staff reviewed the Agreement in the context of the criteria contained in Section 252(e)(2)(A) of the Act and determined that it met the necessary requirements. Under this Section, the Commission may reject an agreement, or any portion thereof, adopted by negotiation under Subsection (a) only if it finds that (i) the agreement, or a portion thereof, discriminates against as telecommunications carrier not a party to the agreement; or (ii) the implementation of such an agreement, or a portion thereof, is not consistent with the public interest, convenience and necessity.

Mr. Omoniyi stated that the Agreement meets the standards set forth in the Telecommunications Act of 1996 and is consistent with the public interest, convenience and necessity. There are no contested issues in this docket. Staff recommended that the Agreement be approved by the Commission for the reasons set forth in the Verified Statement of Mr. Omoniyi. Staff also recommended that the Commission require SBC Illinois to file with the Office of the Chief Clerk, within five (5) days from the date upon which the Agreement is approved, a verified statement that the approved Agreement is the same as the Agreement filed in this Docket with the Verified Petition.

Concerning the implementation of the Agreement, Staff recommends that the Commission require Verizon, within five (5) days from the date the Agreement is approved, to modify its tariffs to reference the adopted Agreement for each service. Staff states that this requirement is consistent with the Commission's Orders in previous negotiated agreement dockets and allows interested parties' access to the Agreement. Staff recommends that such references be contained in the following section of Verizon's tariffs: Agreements with Telecommunications Carriers (ICC No. 10, Section 18). Staff also recommends that the Commission require that Verizon file a copy of the Agreement without Verizon's letter of position with the Chief Clerk of the Commission, within five (5) days from the date the Agreement is approved. Staff further recommends that Verizon verify that the Agreement being filed without Verizon's letter of position is the same as the Agreement filed in this docket with the verified petition. Staff recommends that the Chief Clerk place the filed Agreement without the letter on the Commission's website under Interconnection Agreements. The Commission finds that Staff's recommendations regarding implementation of the Agreement are reasonable and should be adopted.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Verizon and EGIX are telecommunications carriers as defined in Section 13-202 of the Act (220 ILCS 5/1-101 et seq.) which provide telecommunications services as defined in Section 13-202 of the Public Utilities Act;

- (2) Verizon and EGIX have entered into an Agreement which has been submitted to the Commission for approval under Section 252(e) of the Telecommunications Act of 1996;
- (3) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) the Agreement between Verizon and EGIX does not discriminate against a telecommunications carrier not a party to the Agreement and is not contrary to the public interest, convenience and necessity;
- (6) in order to assure that the Agreement is in the public interest, Verizon should implement the Agreement by filing it without Verizon's letter of position with the Chief Clerk of the Commission, within five (5) days of approval by the Commission, along with a verified statement that the Agreement without the letter is the same as the Agreement that was filed in this docket with the verified petition; the Chief Clerk should place the Agreement without the letter on the Commission's website under Interconnection Agreements;
- (7) within (5) days of the entry of this Order, Verizon should modify its tariffs to reference the Agreement in the manner recommended by Staff and described in the prefatory portion of this Order, above;
- (8) the Agreement should be approved as hereinafter set forth;
- (9) approval of the Agreement does not have any precedential effect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Agreement between Verizon North, Inc., Verizon South, Inc., and EGIX Network Services, Inc. is approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Verizon shall comply with findings (6) and (7) of this Order within five days of the date of this Order.

IT IS FURTHER ORDERED that this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 4th day of September, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman